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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,997	12/31/2003	Janet E. Collins	20,101	9958
23556	7590	08/11/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			CRAIG, PAULA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/749,997	Applicant(s) COLLINS ET AL.	
	Examiner Paula L. Craig	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/24/04, 2/18/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 7 and 17 is objected to because of the following informalities: For Claim 7, the "primary fastener" is stated in line 24 to be configured to engage at least a portion of the bodyfacing surface of the liner; this appears to be a typographical error for "secondary fastener". For Claim 17, the claim lacks a period at the end of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 19 recites the limitations "rear waist portion" in line 19 and "front waist portion" in line 26. There is insufficient antecedent basis for these limitations in the claim. The Examiner interprets these limitations as referring to the rear waist region and front waist region respectively.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,174,303 to Surprise et al. in view of U.S. Patent No. 5,873,868 to Nakahata.

8. For Claims 1, 7, and 19, Surprise teaches a disposable absorbent article having opposed longitudinal side edges, opposed lateral end edges, a front waist region, a rear waist region, and a crotch region which extends between and connects the front waist region and the rear waist region (see Surprise, Fig. 2 and col. 3, line 64 to col. 4, line 3). The front waist region has a width extending between opposed longitudinal side edges, and the rear waist region has a width extending between opposed longitudinal side edges (Fig. 2). For Claims 1 and 7, Surprise teaches the disposable absorbent article

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includes an outer cover comprising a stretchable material (Suprise, reference number 30, Fig. 1 and col. 4, lines 55-59). For Claim 19, Suprise teaches the outer cover comprising an elastomeric material (Suprise, col. 4, lines 55-59). For Claims 1, 7, and 19, Suprise shows the outer cover having a bodyfacing surface and a garment facing surface (Fig. 1). A liner is superposed over the bodyfacing surface of the outer cover (Suprise, reference number 54, Fig. 2, col. 6, lines 29-34). The liner has a bodyfacing surface and a garment facing surface. An absorbent core is disposed between the garment facing surface of the liner and the bodyfacing surface of the outer cover (Suprise, reference number 56, Fig. 2 and col. 6, lines 29-34). Suprise shows a dual fastening system (Fig. 2). For Claims 7 and 19, Suprise teaches a pair of primary ears joined to the rear waist region (Suprise, Fig. 2). For Claims 7 and 19, each primary ear has a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge, the first and second connecting edges connecting the proximal and distal edges (Suprise, Fig. 2). (Note that Applicant's specification teaches that the ears may be integrally joined to the rear waist region; see specification, page 5.) For Claim 1, Suprise teaches the dual fastening system having at least two primary fasteners; for Claims 7 and 19, Suprise teaches each primary ear having a primary fastener (reference numbers 62 and 64, Fig. 2 and col. 13, lines 6-10). For Claim 1, at least a portion of each primary fastener is situated inboard from each longitudinal side edge of the rear waist region (Suprise, Fig. 2; vertical dotted line shows longitudinal side edge in the area of fasteners 62 and 64). For Claim 7, at least a portion of the primary fastener is situated inboard from the distal edge (Suprise, Fig. 2).

For Claim 19, the primary fastener is situated inboard from the distal edge of the ear and outboard from at least the longitudinal side edge of the rear waist portion (Suprise, Fig. 2). For Claims 1, 7, and 19, each primary fastener is configured to engage at least a portion of the garment facing surface of the outer cover (Suprise, col. 13, lines 6-17). For Claims 7 and 19, Suprise shows a pair of secondary ears joined to the front waist region, each secondary ear having a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge, the first and second connecting edges connecting the proximal and distal edges (Fig. 2). For Claim 1, Suprise teaches at least two secondary fasteners; for Claims 7 and 19, Suprise teaches each secondary ear having a secondary fastener (Suprise, reference numbers 66 and 68, Figs. 2 and 3, col. 13, lines 42-47). For Claim 1, at least a portion of each secondary fastener is located in the front waist region and situated inboard from each longitudinal side edge of the front waist region (Suprise, Fig. 3). For Claim 7, Suprise shows at least a portion of the secondary fastener being situated inboard from the distal edge (Fig. 2). For Claim 19, Suprise shows the secondary fastener being situated inboard from the distal edge of the ear (Fig. 2). For Claims 1, 7, and 19, each secondary fastener is configured to engage at least a portion of the bodyfacing surface of the liner (Suprise, col. 13, lines 56-60).

9. For Claims 1 and 7, Suprise does not expressly disclose the liner comprising a stretchable material. For Claim 19, Suprise does not expressly disclose the liner comprising an extensible material, nor having the primary and secondary ears be made of a non-elastomeric material. Also for Claim 19, Suprise does not show the secondary

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fastener being situated outboard from at least the longitudinal side edge of the front waist portion. For Claims 1 and 7, Surprise also does not teach the width of the front waist region being at least about 90% of the width of the rear waist region. For Claim 19, Surprise does not teach the width of the front waist region being at least 90% of the width of the rear waist region.

10. For Claims 1 and 7, having the liner be a stretchable material is well known. For Claim 19, having the liner be a stretchable or extensible material is well known.

Nakahata confirms this. For Claims 1 and 7, Nakahata teaches a disposable diaper having a liner comprising a stretchable material (Nakahata, col. 10, lines 17-27). An elastic topsheet material allows small openings in the topsheet material to close when the diaper is removed, which keeps solids from passing back out through the topsheet when a diaper is changed (Nakahata, col. 10, lines 35-53). For Claim 19, Nakahata teaches the liner comprising an extensible material; an extensible topsheet is stated to be part of the preferred embodiment, though it is not the most preferred (Nakahata, col. 10, lines 11-13). Nakahata also indicates that an extensible liner results in a snug and body-conforming fit (Nakahata, col. 13, lines 7-14). For Claim 19, having ears made of either elastomeric or non-elastomeric material is well known. Nakahata teaches that the ears may be made of either elastomeric or non-elastomeric material, such as extensible material (see Nakahata, col. 8, lines 53-59). Either elastomeric or non-elastomeric material is indicated in Nakahata to provide a comfortable fit (col. 8, lines 53-59). For Claims 1, 7, and 19, having the width of the front waist region be at least about 90% or at least 90% of the width of the rear waist region is also well known, which is confirmed

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by Nakahata. For Claims 1 and 7, Nakahata discloses the width of the front waist region to be at least about 90% of the width of the rear waist region (Nakahata, Fig. 2). For Claim 19, Nakahata also discloses the width of the front waist region to be at least 90% of the width of the rear waist region.

11. For Claims 1 and 7, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disposable absorbent article of Suprise to include the stretchable liner of Nakahata to keep solids from passing back out through the topsheet when the diaper is changed, as well as for other reasons known in the art, such as providing for close conformance of the liner to the buttocks of the wearer. For Claim 19, it would have been obvious to modify Suprise to include an extensible liner, as preferable according to Nakahata, in order to provide a snug and body-conforming fit. For Claim 19, it would have been obvious to make the primary and secondary ears of either an elastomeric or non-elastomeric material, to provide a comfortable fit. For Claim 19, it would have been obvious to modify Suprise to situate the secondary fastener outboard from the longitudinal side edge of the front waist region. Situating a fastener outboard from a longitudinal side edge is well known as a typical placement of a fastener in a diaper, as is confirmed by the placement of the primary fasteners in both Suprise and Nakahata outboard from at least the longitudinal side edge. For Claims 1, 7, and 19, it would also be obvious to make the width of the front waist region be at least about 90% or at least 90% of the width of the rear waist region, as this configuration is well known in the art and described in Nakahata.

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12. For Claims 2, 8, 15, and 18, Suprise/Nakahata teach the outer cover being an elastomeric material (see Suprise, col. 4, lines 55-59).

13. For Claims 3, 9, 14, and 17, Suprise/Nakahata teach the liner being an extensible material, as stated above for Claim 19. See Nakahata, col. 10, lines 11-13.

14. For Claims 4, 6, and 12, Suprise/Nakahata teach the width of the front waist region being at least 90% of the width of the rear waist region, as stated above for Claim 19. See Nakahata, Fig. 2.

15. For Claim 5, Suprise/Nakahata teach the liner material being an elastomeric material. See Nakahata, col. 10, lines 11-25.

16. For Claims 10 and 13, Suprise/Nakahata teach each primary fastener being situated outboard from at least the longitudinal side edge of the rear waist region, as stated above for Claim 19 in paragraph 8.

17. For Claims 11 and 16, Suprise/Nakahata teach each secondary fastener being situated outboard from at least the longitudinal side edge of the front waist region, as stated above for Claim 19 in paragraph 11.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 4,988,346 to Pfefferkorn, 5,069,678 to Yamamoto et al., 5,370,634 to Ando et al., 5,593,401 to Sosalla et al., and 6,092,242 to Niedermeyer, show primary and secondary fasteners. U.S. Patent Nos. 4,710,187 to Boland et al., 5,964,743 to Abut et al., 6,409,711 to Jonbrink, 6,648,866 to Magee et al.

show elastic topsheets. U.S. Patent No. 6,020,535 to Blenke et al. shows an extensible liner, which is stated to permit the waist elastics to be omitted. U.S. Patent No. 6,406,466 to Pozniak et al. shows a stretchable outer cover and bodyside liner. U.S. Patent No. 5,269,775 to Freeland et al. and U.S. Patent Application Publication US 2004/0102749 to Olson et al. show an elastic or elastomeric topsheet and equal widths of front and rear regions.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
PRIMARY EXAMINER

